

FORTY-FIFTH DAY
(Tuesday, March 31, 1981)

The Senate met at 11:00 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Blake, Brooks, Brown, Caperton, Doggett, Farabee, Harris, Howard, Jones, Kothmann, Leedom, Mauzy, McKnight, Meier, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

Absent-excused: Andujar, Glasgow.

A quorum was announced present.

The Reverend Dr. Gerald Mann, Senate Chaplain, offered the invocation as follows:

Our Father, for President Reagan, James Brady, Agent McCarthy and Officer Delahanty, we continue to pray for Thy healing and grace. And we also pray for ourselves. Remind us that we are never far from the jungle until we are close to Thee. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVES OF ABSENCE

Senator Andujar was granted leave of absence for today on account of important business on motion of Senator Harris.

Senator Glasgow was granted leave of absence for today on account of important business on motion of Senator Farabee.

CO-AUTHOR OF SENATE BILL 643

On motion of Senator Mauzy and by unanimous consent, Senator Mengden will be shown as Co-author of S.B. 643.

MESSAGE FROM THE HOUSE

House Chamber
March 31, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 48, Relating to the date for holding county and senatorial district conventions of a political party.

S.B. 211, Relating to the offense of criminal mischief, amending section 28.03, Penal Code, 1973. (With amendments)

S.B. 530, Relating to collective rate-making procedures for all commodities and services regulated by the railroad commission. (With amendment)

H.C.R. 123, Commending The University of Texas for its one hundred years of service to the people of Texas.

S.B. 767, Relating to platting and replatting and recording of real estate sub-divisions. (With amendments)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

REPORTS OF STANDING COMMITTEES

Senator Farabee submitted the following report for the Committee on State Affairs:

S.J.R. 51
S.J.R. 52
C.S.S.B. 730 (Read first time)
C.S.S.B. 829 (Read first time)
C.S.H.B. 629 (Read first time)
C.S.S.B. 1061 (Read first time)

Senator Brooks submitted the following report for the Committee on Human Resources:

S.B. 292
S.B. 255

Senator Wilson, Acting Chairman, submitted the following report for the Committee on Human Resources:

S.B. 60

SENATE BILLS ON FIRST READING

On motion of Senator Mengden and by unanimous consent, the following bills were introduced, read first time and referred to the Committee indicated:

S.B. 1166 by Traeger, Doggett State Affairs
Relating to the Texas National Guard Armory Board.

S.B. 1167 by Doggett Jurisprudence
Relating to the authority of notaries public; amending Art. 5954, R.C.S., as amended; and declaring an emergency.

S.B. 1168 by Santiesteban Intergovernmental Relations
Relating to county Juvenile Boards.

S.B. 1169 by Mengden

Education

To require balanced treatment of creation-science and evolution science in public schools.

S.B. 1170 by Glasgow

Jurisprudence

Relating to authorizing the recovery of certain types of damages in wrongful death actions.

HOUSE BILLS ON FIRST READING

The following bills received from the House were read the first time and referred to the Committee indicated:

H.B. 1228, To Committee on Economic Development.

H.B. 11, To Committee on Economic Development.

H.B. 197, To Committee on Economic Development.

SENATE RESOLUTION 449

Senator Caperton offered the following resolution:

WHEREAS, Retired Army Master Sergeant Roy P. Benavidez, resident of El Campo, received the Medal of Honor from President Ronald Reagan on February 24, 1981; the Medal of Honor is the highest military award that this country can bestow upon a citizen, and the people of this state, as well as people all across the nation, are extremely proud of Mr. Benavidez for his noble and courageous actions; and

WHEREAS, Mr. Benavidez personally saved the lives of eight comrades and rescued classified documents despite suffering serious wounds himself; he is the 17th member of the United States Army Special Forces to be awarded the Medal of Honor and the 155th member of the U.S. Army to receive this illustrious award for action in Vietnam; and

WHEREAS, This distinguished Texan was born in DeWitt County on August 5, 1935; he lettered in high school track and participated in the State Golden Gloves Tournament, and when he was 18, he enlisted in the army and served overseas in the infantry. General William Westmoreland encouraged him to volunteer for Special Forces and Airborne training, and he was accepted and eventually was sent to Vietnam where he also won the Distinguished Service Cross for his notable achievements in battle; and

WHEREAS, The recipient of numerous honors and decorations during his military career, Mr. Benavidez, in addition to the Medal of Honor and the Distinguished Service Cross, received three Purple Hearts, with two more earned but not issued; an Army Commendation Medal; the Good Conduct Medal; Army Occupation and Vietnam Service Medals; the United States Parachutist Badge; the Vietnam Parachutist Badge; the Presidential Unit Citation; the Meritorious Unit Commendation; and the Army Expeditionary Medal; and

WHEREAS, Mr. Benavidez actively supports many veterans' organizations with his enthusiastic membership; he is a member of the Legion of Valor, the American Legion, the Disabled American Veterans, the Maryknoll Society, the Special Forces Decade Association, and the Lone Star Chapter, 82nd Airborne Association; and

WHEREAS, In order to receive a Medal of Honor, Roy Benavidez performed a deed of outstanding bravery and self-sacrifice; President Reagan summarized the feeling of the people of the United States when he told him that

the honor came from "a nation grateful to you and all your comrades, living and dead"; now, therefore, be it

RESOLVED, That the Senate of the 67th Legislature of the State of Texas join with people all across the nation in expressing deep pride in the accomplishments of Roy P. Benavidez, Medal of Honor recipient, and extend to him best wishes for many years of happiness and success; and, be it further

RESOLVED, That an official copy of this resolution be prepared for Mr. Benavidez as an expression of high regard and respect from the Texas Senate.

The resolution was read and was adopted.

GUESTS PRESENTED

Senator Caperton escorted Sergeant Benavidez to the President's Rostrum.

The Members welcomed Sergeant Benavidez with a standing ovation. The President presented an enrolled copy of Senate Resolution 449 to Sergeant Benavidez.

Sergeant Benavidez addressed the Senate, expressing his appreciation for this recognition.

Senator Caperton introduced a delegation from El Campo and the following recipients of the Medal of Honor: Sergeant First Class Jose Lopez, Master Sergeant Cleto Rodriguez, Lt. Colonel George O'Brien, Dr. Eli Whiteley, Mr. Lucian Adams, and Mr. James Logan.

HOUSE CONCURRENT RESOLUTION 123

The President laid before the Senate the following resolution:

H.C.R. 123, Commending The University of Texas for its one hundred years of service to the people of Texas.

On motion of Senator Doggett and by unanimous consent, the resolution was considered immediately and was adopted.

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was filed with the Secretary of the Senate:

Austin, Texas
March 30, 1981

TO THE SENATE OF THE SIXTY-SEVENTH LEGISLATURE; REGULAR SESSION:

Pursuant to Article III, Section 5 of the Constitution of Texas, I herewith submit as an emergency matter the following:

- 1). Texas Southern University has had some extraordinary and unusual expenses in the past several months. Additional personnel were employed to help correct the bookkeeping system to attempt to account for their funds. In addition there was a cash loss caused by a robbery of a significant amount of money through no fault of the

University. Finally there was fire damage to a dormitory. So that Texas Southern University may be reimbursed for these at the earliest possible date I therefore declare House Bill 1884 by Davis and Edwards as an emergency matter.

Respectfully submitted,

William P. Clements, Jr.
Governor

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Subcommittee on Nominations:

Austin, Texas
March 31, 1981

TO THE SENATE OF THE SIXTY-SEVENTH LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointment:

TO BE PRESIDING JUDGE OF THE FIFTH ADMINISTRATIVE JUDICIAL DISTRICT:

For a term of four years upon qualifying for such office:

JUDGE JOSE R. ALAMIA of Edinburg, Hidalgo County, is being reappointed.

Respectfully submitted,

William P. Clements, Jr.
Governor of Texas

SENATE BILL 472 RECOMMITTED

On motion of Senator Mauzy and by unanimous consent, S.B. 472 was recommitted to the Committee on Intergovernmental Relations.

SENATE RULE 103 SUSPENDED

On motion of Senator Mauzy and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Intergovernmental Relations might consider S.B. 472 today at 3:00 o'clock p.m.

MOTION TO PLACE SENATE BILL 631 ON THIRD READING

Senator Parker moved to suspend the regular order of business to take up for consideration at this time on its third reading and final passage:

S.B. 631, Relating to the boundaries of the Lower Neches Valley Authority.

The motion was lost by the following vote: Yeas 19, Nays 4, Present-not voting 6. (Not receiving two-thirds vote of Members present)

Yeas: Brooks, Caperton, Farabee, Kothmann, Leedom, Mauzy, Mengden, Ogg, Parker, Santiesteban, Sarpalius, Short, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

Nays: Blake, Doggett, Harris, McKnight.

Present-not voting: Brown, Howard, Jones, Meier, Richards, Snelson.

Absent-excused: Andujar, Glasgow.

COMMITTEE SUBSTITUTE SENATE BILL 322 ON SECOND READING

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 322, Increasing benefits paid to annuitants of the Teacher Retirement System of Texas.

The bill was read second time and was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 322 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 322** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Andujar, Glasgow.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Andujar, Glasgow.

MESSAGE FROM THE HOUSE

House Chamber
March 31, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 1016, Relating to the expenses of the members of the Texas Board of Health Dental Advisory Committee and providing necessary staff.

H.B. 267, Relating to the regulation of doves, pigeons, and shorebirds.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

MOTION TO PLACE SENATE BILL 500 ON SECOND READING

Senator Mengden moved to suspend the regular order of business to take up for consideration at this time:

S.B. 500, Relating to the responsibility of a county to provide liability coverage for certain full-time law enforcement personnel.

The motion was lost by the following vote: Yeas 17, Nays 12. (Not receiving two-thirds vote of Members present)

Yeas: Blake, Brooks, Brown, Doggett, Kothmann, Leedom, Mauzy, Mengden, Ogg, Parker, Richards, Traeger, Truan, Uribe, Vale, Williams, Wilson.

Nays: Caperton, Farabee, Harris, Howard, Jones, McKnight, Meier, Santiesteban, Sarpalius, Short, Snelson, Travis.

Absent-excused: Andujar, Glasgow.

COMMITTEE SUBSTITUTE SENATE BILL 980 ON THIRD READING

Senator Doggett moved to suspend the regular order of business to take up for consideration at this time on its third reading and final passage:

C.S.S.B. 980, Relating to regulation of the practice of osteopathic medicine; providing penalties.

The motion prevailed by the following vote: Yeas 20, Nays 9.

Yeas: Blake, Brooks, Caperton, Doggett, Kothmann, Mauzy, McKnight, Meier, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Truan, Uribe, Williams, Wilson.

Nays: Brown, Farabee, Harris, Howard, Jones, Leedom, Mengden, Travis, Vale.

Absent-excused: Andujar, Glasgow.

The bill was read third time and was passed by the following vote: Yeas 20, Nays 9. (Same as previous roll call)

SENATE BILL 478 ON SECOND READING

On motion of Senator Travis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 478, Relating to persons who perform inspections of real property amending The Real Estate License Act, Chapter 216, Acts of the 64th Legislature, Regular Session, 1975, as last amended by Chapter 585, Acts of the

66th Legislature, Regular Session, 1979 (Article 6573a, Vernon's Texas Civil Statutes); providing for severability; and declaring an emergency.

The bill was read second time.

Senator Travis offered the following committee amendment to the bill:

Amend Section 1 of S.B. 478 by deleting subsection (d) and adding a new subsection (d) to Section 18C of Article 6573a, Vernon's Texas Civil Statutes, as amended, which shall read as follows:

(d) It is the intent of the Legislature that the provisions of this Section shall not apply to any electrician, plumber, carpenter, any person engaging in the business of structural pest control in compliance with the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes), or any other person who repairs, maintains, or inspects improvements to real property and who does not hold himself out to the public via personal solicitation or public advertising as being in the business of inspecting such improvements pursuant to the provisions of any earnest money contract form adopted by the Commission.

The committee amendment was read and was adopted.

Senator Doggett offered the following amendment to the bill:

Amend Section 1 of S.B. 478 by adding a new subsection (g) and a new subsection (h) to Section 18c of Article 6573a, Vernon's Texas Civil Statutes, as amended, which shall read as follows:

- (g) It shall be a deceptive trade practice actionable under Chapter 17, Subchapter E, Business & Commerce Code, as amended, and a violation of this Article for any person required to register pursuant to the provisions of this Section to perform an inspection pursuant to a written contract which does not contain the following statement in at least 10-point bold type above or adjacent to the signature of the purchaser of the inspection, to wit:

NOTICE: YOU THE BUYER HAVE OTHER RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT WHICH ARE IN ADDITION TO ANY REMEDY WHICH MAY BE AVAILABLE UNDER THIS CONTRACT.

FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY OR THE ATTORNEY OF YOUR CHOICE.

- (h) Any violation of this Article is a deceptive trade practice and is actionable by any person for \$1,000 as a civil penalty, or actual damages sustained, whichever is greater. Any plaintiff who shows a violation of this Article shall recover court costs and attorney's fees that are reasonable in relation to the amount of work expended. Such violation is also actionable by any consumer as a deceptive

trade practice pursuant to Chapter 17, Subchapter E, Business & Commerce Code, as amended.

The amendment was read and was adopted.

Senator Harris offered the following amendment to the bill:

Amend Section 1 of S.B. 478 by striking subsection (a)(3) of Section 18C in its entirety and substituting in lieu thereof the following:

(3) pay the following fees to the commission:

- (i) a fee not to exceed \$100 for the filing of an original registration;
- (ii) a fee not to exceed \$100 for annual certification of registration status; and
- (iii) a fee not to exceed \$10 for a change of registration information.

The amendment was read and was adopted.

On motion of Senator Travis and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

SENATE BILL 478 ON THIRD READING

Senator Travis moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 478 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Andujar, Glasgow.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Andujar, Glasgow.

MEMORIAL RESOLUTIONS

S.R. 441 - By Farabee: Memorial resolution for Judge R. J. "Judson" Balch.

S.R. 442 - By Doggett: Memorial resolution for Cecil M. Cabaniss.

WELCOME AND CONGRATULATORY RESOLUTIONS

S.R. 443 - By Doggett: Commending Judge Terry Jacks.

S.R. 444 - By Doggett: Extending congratulations to the Austin Symphony Orchestra on the occasion of its 70th anniversary.